camouflage to by-pass the Rent Control Ordinance or was an agreement to contract out of the said Ordinance; from denying it to be true that it was pursuant to the 1965 agreement and to the assignment thereof to the plaintiff and to the said notices that as from about April 1967 to September 30, 1970 the defendant was in occupation of the premises and was using the said furniture, chattels and effects; and from asserting that the defendant was a tenant of Tay Song Chay or of the plaintiff.

In the present case, the circumstances and conduct of the parties show that all that was intended was that the defendant should have a personal privilege as a licensee or agent under the contract to run the coffee shop at the premises for a period of sixty months with no interest in the land at all. By effluxion of time, the plaintiff as registered owner of the property and as assignee of the 1965 agreement is, therefore, entitled to possession of the premises by September 30, 1970. After that date, the defendant occupies the premises at sufferance and is liable to be turned out whenever the plaintiff thought fit to execute her right to do so.

For reasons stated, I give judgment for the plaintiff in the following terms: —

(1) that the defendant do deliver vacant possession to the plaintiff of the ground floor of the building, No. 29, Jalan Foch, Kuala Lumpur, on or before December 1, 1972 subject to the terms and conditions of the agreement dated September 9, 1965 including the refund to the defendant of the deposit of $3,000;

(2) that the defendant do deliver to the plaintiff the furniture, chattels and effects as set out in the schedule to the said 1965 agreement;

(3) damages at $515 per month with effect from October 1, 1970 till delivery of vacant possession;

(4) costs.

Order accordingly.

Solicitors: *V. K. Palasuntharam; Kam Woon Wah & Co.*

AHMAD ISMAIL v. MALAYAN MOTOR COMPANY & ANOR.

[A.C.J. (Mohamad Azmi J.) November 19, 1972]

[Kuala Lumpur — Civil Appeal No. 6 of 1972]

Hire-Purchase — Claim against car dealer — Relationship of car dealer and finance company — Implied condition that owner has right to sell the goods — Motor car detained by police and subsequently released — Whether breach of condition — Hire Purchase Act, 1969, 6(1)(b).

Sale of Goods (Malay States) Ordinance, 1957, s. 14(a).

This was an appeal against the decision of the President, Sessions Court, dismissing the plaintiff's claim against the first defendant or in the alternative against the second defendant for the sum of $3,195 interest, general damages and costs. The first defendant was a second hand motor vehicle dealer and the second defendant was a finance company. The plaintiff bought a motor car and entered into a hire-purchase agreement with the second defendant, under which the second defendant was referred to as the owner and the plaintiff as the hirer. The car was subsequently detained by the police on suspicion that it was a stolen vehicle but it was subsequently released. The learned president dismissed the plaintiff's claim against the defendants. On appeal it was argued (1) that the learned president erred in law in holding that there was a sale of the car by the first defendant to the second defendant and that there was no contract of sale between the plaintiff and the car dealer; (2) even if there was a sale of the car by the car dealer to the finance company, the latter had committed a breach of the implied condition of the hire-purchase agreement.

Held: (1) the learned president was correct in holding that there had been a sale of the car from the first defendant to the second defendant and in dismissing the plaintiff's claim against the first defendant;

(2) in the circumstances there was indisputable evidence that the car was not in fact a stolen vehicle and as such there could be no question that the title could not pass to the plaintiff under section 6(1)(b) of the Hire Purchase Act or under section 14(a) of the Sale of Goods (Malay States) Ordinance, 1957 at the time when the property was to pass.

Cases referred to:-

(1) *Car and Universal Finance Co. Ltd.* v. *Caldwell* [1964] 1 All E.R. 290 at p. 297, C.A.

(2) *Farnworth Finance Facilities Ltd.* v. *Attryde and another* [1970] 2 All E.R. 774 at pp. 777 and 778.

(3) *Warman* v. *Southern Countries Car Finance Corporation Ltd.* [1949] 1 All E.R. 711 at pp. 712 and 713.

CIVIL APPEAL.

Raja Abdul Aziz bin Raja Addruse for the appellant.

Miss R. Kandiah for the first respondent.

Chow Sing Yau for the second respondent.

Mohamed Azmi J.: This is an appeal against the decision of the Senior President Sessions Court, Kuala Lumpur, given on December 18, 1971, in which he dismissed the plaintiff's claim against the first defendant or in the alternative against the second defendant for the sum of $3,195, interest, general damages and costs.

The facts of the case were as follows. The first defendant was a second-hand motor vehicle dealer whilst the second defendant was a finance company, both having their places of business at Jalan Pudu, Kuala Lumpur. On December 18, 1969 the plaintiff, an army staff sergeant, decided to buy a second-hand Morris car bearing registration No. BW 343 from the first defendant (hereinafter referred to as "the car dealer") at the price of $4,900. He paid the car dealer $2,200 comprising of a deposit of $1,000 in cash and $1,200 by way of trade-in of his old car. As for the balance of $2,700, it was agreed that it should be settled on or before December 19, 1969, in default of which the deposit of $1,000 would be forfeited. Since the plaintiff had no money to pay for the balance sum, he was introduced by the car dealer to the second defendant (hereinafter referred to as "the finance company"), as a result of which the plaintiff entered into a hire-purchase agreement with the said company on December 19, under which the finance company was referred to as the 'owners' of the Morris car and the plaintiff as the 'hirer'. In the hire-purchase agreement (Exhibit P3), the total amount payable by the plaintiff was stated to be $5,820, out of which $4,900 represented the price of the Morris car whilst the balance was

for cost of accessories and interest. After deducting the amount which the plaintiff had already paid to the car dealer, the balance sum to be paid by the plaintiff to the finance company was $3,600 repayable by twenty-four instalments of $150 each on the nineteenth of every month, the first of such instalment to be paid on January 19, 1970. The plaintiff paid the monthly instalment for four months until the Morris car was detained by the police on April 30, 1970 on the ground that it was suspected to be a stolen vehicle. By a notice sent to both defendants dated July 4, 1970, the plaintiff through his solicitors terminated the hire-purchase agreement. The heading and relevant parts of the notice (Exhibit P5) read as follows:

"Hire Purchase Agreement No. KK 2991
dated 19th December, 1969

We are instructed that under the abovementioned Hire Purchase Agreement, our client bought by hire-purchase one motor vehicle Morris model No. 1000 Registration No. BW 343 at a price of $5,820.00. We are further instructed that on the 19th day of December, 1969, our client paid you a deposit of $2,220.00 and that the balance of $3,600.00 was agreed to be paid by 24 instalments of $150.00 per month.

PLEASE TAKE NOTICE we are instructed to and we do hereby terminate the Agreement referred to above by virtue of breach of condition and warranty on your part in that you have no title to the said motor vehicle. The deposit (2,220.00) and the four months instalments (amounting to $600.00) were paid to you for no consideration. Our client is therefore entitled to a refund of the sum of $2,820.00. Further, as a result of the breach on your part, our client suffered special damages amounting to $350.00. We hereby demand from you the total sum of $3,170.00 payable to our client within 14 days from the date hereof failing which our instruction is to take proceedings against you without further notice."

There are two principal grounds in this appeal. On the first ground it is argued that the learned Senior President erred in law in holding that there was a sale of the Morris car by the first defendant to the second defendant and that there was no contract of sale between the plaintiff and the car dealer. On the true construction of the "Document of Evidence for Purchasing Motor Vehicle" dated December 18. 1969 (Exhibit P2) and the receipt dated December 19, 1969 (Exhibit P1), it is argued that the learned Senior President should have held there was a contract of sale between the plaintiff and the car dealer. Learned counsel for the appellant also urged that the only reasonable construction to be given to these three documents (*i.e.* Exhibits P1, P2 and P3) is that there was an assignment of the Morris car by the car dealer to the finance company so that the car dealer never stepped out of the picture as the car would have to be reassigned to him for the purpose of completing the sale agreement. Having regard to the three documentary exhibits and the evidence adduced, I do not think that there was a sale agreement between the plaintiff and the car dealer. Considering the three documentary exhibits together, in my view, it is apparent that the intention of the parties in this case was that the car dealer should sell the car at $4,900 to the finance company who would then in turn sell it to the plaintiff on a hire-purchase agreement at $5,820. This is consistent with the admission made by the plaintiff in the notice terminating the hire-purchase agreement to the effect that he had bought the vehicle by hire-purchase at a price of $5,820. It is also supported by the receipt (Exhibit P1) issued by the car dealer which stipulated that the balance of $2,700 should be settled on or before December 19, 1969; otherwise the deposit of $1,000 would be forfeited. Since the deposit was never forfeited, it should reasonably be inferred that the balance sum of $2,700 must have been paid by the finance company to the car dealer by December 19, and this transaction between the car dealer and the finance company must be one of sale and purchase. Once the car dealer had received the full purchase price of the Morris car, I do not think that it had any more interest in the matter since the ownership of the motor car would have been transferred from the car dealer to the finance company who in turn hired it to the plaintiff. The following observation by Sellers L.J. in *Car and Universal Finance Co., Ltd.* v. *Caldwell*,[1] which had been referred to by the learned Senior President, would tend to support the contention of counsel for the first defendant that there was no contract of sale between the plaintiff and the dealer:

"No doubt car dealers are agents for some purposes of the finance companies with whom they deal in relation to transactions with the hirer; but the basic transaction between car dealer and finance company is one of sale and purchase."

Under the circumstances, I see no good reason to disturb the order of the learned Senior President in dismissing the plaintiff's claim against the car dealer with costs. I agree with the learned President's conclusion that the plaintiff's right, if any, was only against the finance company under the hire-purchase agreement.

On the second ground of appeal, it is submitted that, even if there was a sale of the Morris car by the car dealer to the finance company, the latter had committed a breach of implied condition of the hire-purchase agreement. Since the vehicle was detained by the police on April 30, 1971, the finance company is said to have no title to the care and therefore has committed a breach of condition under section 6(1)(b) of the Hire-Purchase Act, 1967 which states:

"In every hire-purchase agreement there shall be — an implied condition on the part of the owner that he shall have a right to sell the goods *at the time when the property is to pass.*" (The emphasis is mine).

A similar provision can also be found in section 14(a) of the Sale of Goods (Malay States) Ordinance No. 1 of 1957. The question to be determined was whether there was a fundamental breach of the hire-purchase contract. (See *Farnworth Finance Facilities Ltd.* v. *Attryde & Anor.*[2]). The line of argument goes this way. The plaintiff as a hirer had the option to purchase at any time. (See *Warman* v. *Southern Counties Car Finance Corporation, Ltd.*[3]). The question posed by learned counsel for the plaintiff is: was the finance company in the position to transfer the title of the Morris car to the plaintiff at the time when the vehicle was detained or at the time when it was released to the finance company on a bond, had the plaintiff decided to affirm the contract, *i.e.* exercised his option by paying all the balance due towards the purchase price? At first sight, this line of argument appears to be strongly in favour of the plaintiff as it is clear from the conditions imposed by the police bond (Exhibit P6) that the finance company would not be in a position even to hire or loan the vehicle to anyone. However, it should be noted that when the car was detained it

was admitted by the plaintiff in evidence that the police offerred to return the vehicle to him although the police must have known that the car was hired to him on a hire-purchase agreement, but he refused to accept the offer and instead took action to terminate the agreement and claimed for special and general damages. It is apparent that only after the plaintiff had refused the police offer that the car was released by the police on a bond to the finance company. Having refused to accept the car in the first instance, I find the plaintiff's argument that the conditions imposed on the finance company in the police bond are inconsistent with the plaintiff's rights under the Hire-Purchase Act to be untenable. It should also be borne in mind that the present case is not one where a finance company was the owner of the motor car let it out on hire-purchase. There is no evidence here that the finance company's title to the Morris car was defective in any way. In my judgment, the fact that the car was detained temporarily for purpose of police investigation on suspicion — which turned out to be unfounded — did not affect its title. Although the car was detained by the police on suspicion, it is not in dispute that the vehicle had now been proved to be not stolen and the conditions in the bond withdrawn. The question as to whether the finance company was in a position to transfer the car when it was under police investigation is merely hypothetical as it is based on two assumptions, viz. that the finance company was not in fact the owner of the car and that the plaintiff had exercised his option to purchase. As stated earlier on, in the present case, there was no evidence that the Morris car was a stolen vehicle and nor was there evidence that the plaintiff had exercised his option to purchase. There can only be a breach of section 6(1)(b) of the Hire-Purchase Act if "at the time when the property is to pass" the finance company had no right to sell the car to the plaintiff. Under the circumstances of this case, I do not consider there was any fundamental breach entitling the plaintiff to terminate the hire-purchase agreement. Whatever damage suffered by the plaintiff was directly caused by police investigation and by the plaintiff's own action in refusing to accept the car from the police. As stated by the learned Senior President in his grounds of judgment, in all the six cases cited by counsel for the plaintiff, the offence or infringement which rendered the purported passing of title voidable was established to the satisfaction of the court. There was indisputable evidence in this case that the Morris car was not in fact a stolen vehicle and as such there could be no question that the title could not pass to the plaintiff under section 6(1)(b) of the Hire-Purchase Act or under section 14(a) of the Sale of Goods (Malay States) Ordinance, 1957, at the time when the property is to pass.

For the reasons which I have stated, I accordingly dismiss the plaintiff's appeal with costs.

Appeal dismissed.

Solicitors: *Rithauddeen & Aziz; Khoo & Sidhu; Chye, Chow, Chung & Tang.*

BUILDING SOCIETY OF MALAYA LTD. v. JOSEPH MICHAEL

[O.C.J. (Mohamed Azmi J.) October 29, 1971]

[Kuala Lumpur — Originating Summons Nos. 357 of 1968 and 102 of 1972]

Practice and Procedure — Application to set aside formal order — Slip rule — Inherent jurisdiction of Court — Interest — Period for which chargeable — Rules of Supreme Court, Order 28 rule 11.

In this case an order had been made for the sale of land charged to the chargee. The chargor applied to have the order set aside under the inherent jurisdiction of the court, as it did not correctly express the intention of the court. The order in this case had been approved by the then solicitor for the chargor. The order provided for payment of interest but did not specify for what period the interest should be chargeable. The chargee applied for interpretation of the order concerning the period during which the interest was payable.

Held: (1) the fact that the formal order was at variance with the court order did not make it null and void; it was only an irregularity which could be cured under Order 28 rule 11 or under the inherent jurisdiction or the court;

(2) in any case the chargor had failed to show that the order as extracted in this case did not correctly express the intention of the court;

(3) the interest ordered should be payable until the date of realization, that is the date of sale.

Cases referred to:-

(1) *Macfoy* v. *United Africa Co. Ltd.* [1961] 3 All E.R. 1169.

(2) *Craig* v. *Kanseen* [1943] 1 All E.R. 108.

(3) *Riches* v. *Westminster Bank* [1943] 2 All E.R. 725.

(4) *American International Assurance Co. Ltd.* v. *Union Builders (Malaysia) Sdn. Bhd.* [1973] 1 M.L.J. 95.

ORIGINATING SUMMONS.

Chin Yew Meng for the chargee.

Chelva Nayagam for the chargor.

Mohamed Azmi J.: In Originating Summons No. 357 of 1968, the chargor is applying by Notice of Motion to set aside the Order of Sale dated March 3, 1969 granted by the court in respect of the charge over the land held under Certificate of Title No. 27139 for Lot 7768 Mukim of Petaling pursuant to section 256 of the National Land Code. On the other hand, in Originating Summons No. 102 of 1972, the chargee is applying under Order 54A of the Rules of the Supreme Court for a declaration as to the interpretation of the same order of the court concerning that part of the order relating to the period within which the interest at 9 per cent per annum is payable. For purpose of convenience, both applications were consolidated by consent and heard in open court.

On the face of the chargor's Notice of Motion and the affidavit in support, this application to set aside the order dated March 3, 1969 is essentially based on the ground that the order extracted is at variance with the order actually given by the judge, and as such it is null and void and so are all subsequent proceedings based on the said order. Mr. Chelva Nayagam, counsel for the chargor, makes it quite clear that the application is not to set aside the judgment of the court but is only against the order as extracted,